



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 509

IN THE MATTER
OF
MICHAEL P. WALSH

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Michael P. Walsh ("Walsh") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 9, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Walsh had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on July 12, 1994, voted to find reasonable cause to believe that Walsh violated G.L. c. 268A, §3.

The Commission and Walsh now agree to the following findings of fact and conclusions of law:

1. Walsh has served in the state legislature from January 1983 to the present. During that time, Walsh has served on various committees, including the Joint Committee on Insurance (until February 1988) where he served as vice chairman. Walsh is currently the chairman of the Government Regulations Committee.
2. As a state representative, Walsh has sponsored and co-sponsored bills affecting the interests of the insurance industry.
3. In addition, Walsh, as a member of various committees, has participated in many hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. Walsh has also voted on bills of interest to the insurance industry when they reached the House floor.
4. During the period here relevant, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Company, Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. During the period here relevant, Ralph Scott ("Scott") was a Hancock lobbyist. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all fifty states. Hancock offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, Hancock's activities are more comprehensively regulated by Massachusetts than by any other state. At all relevant times, Sawyer and Scott were registered legislative agents (for Hancock) in Massachusetts.
5. During the period here relevant, Andrew Hunt ("Hunt") was a registered legislative agent and lobbyist for the Massachusetts Medical Society, which represents the interests of medical professionals in Massachusetts.
6. During the period here relevant, William Carroll ("Carroll") was a registered legislative agent and lobbyist for the Life Insurance Association of Massachusetts ("LIAM"). LIAM is a trade association of insurance companies doing business in Massachusetts.
7. At all relevant times, Walsh knew that Sawyer and Scott were lobbyists for Hancock. At all relevant times, Walsh also knew that Carroll was a lobbyist for LIAM and that Hunt was a lobbyist for the Massachusetts

Medical Society. From time to time, these four individuals lobbied Walsh regarding various pieces of legislation.

8. Lobbyists are employed to promote, oppose or influence legislation.

9. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.

10. On December 8, 1990, Scott paid \$68 for Walsh to golf at the Mahogany Run Golf Course in St. Thomas in the Virgin Islands, where Walsh was attending a Council of State Governments conference.

11. In March 1991, --while Walsh was attending a National Conference of Insurance Legislators ("NCOIL") conference in Savannah, Georgia, Sawyer paid for Walsh's golf and related expenses at Sea Pines Plantation, at a cost of \$163, and provided Walsh and his guest with at least one free meal costing in excess of \$50. Thus, in March 1991, Walsh received gratuities from Sawyer totalling more than \$213.

12. During the fall of 1992, Sawyer provided Walsh with two Hancock tickets for *Phantom of the Opera* at the Wang Center. Walsh attended the show with his wife. These two tickets were worth \$120.

13. Between March 10, 1993 and March 15, 1993, Walsh and his wife stayed at the Plantation Resort at Amelia Island, Florida, where he attended a conference sponsored by NCOIL which ran from March 11th to March 14th. Walsh stayed at the Plantation Resort with a number of other legislators and Massachusetts lobbyists.

On the evening of March 11, 1993, Walsh and his wife ate dinner at the Plantation Resort with Sawyer and a group of Massachusetts legislators. Sawyer paid for the dinner. The value of this gratuity was at least \$50.

On the evening of March 12, 1993, Walsh and his wife ate dinner at the Ritz Carlton with a group of Massachusetts legislators and lobbyists. Carroll, the lobbyist representing LIAM, paid for this dinner.^{1/} The total cost of the dinner was approximately \$3,000. The Walshes' pro rata share of the cost of the dinner was approximately \$150.

On March 15, 1993, Walsh golfed with Hunt and two other Massachusetts legislators. Walsh's golf fees were paid for by Hunt at a cost of \$80.

14. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

15. Massachusetts legislators are state employees.

16. Anything worth \$50 or more is of substantial value for §3 purposes.^{2/}

17. By accepting a total of approximately \$700 in drinks, meals, lodging, golf and theater entertainment from Scott, Sawyer, Carroll and Hunt, all while Walsh was in a position to take official actions which could benefit those legislative agents and/or their principals, Walsh accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Walsh violated §3(b).^{3/}

18. The Commission is aware of no evidence that the gratuities referenced above were provided to Walsh with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Walsh took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{4/}

In view of the foregoing violations of G.L. c. 268A by Walsh, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of

the following terms and conditions agreed to by Walsh:

(1) that Walsh pay to the Commission the sum of two thousand, one hundred dollars (\$2,100.00)^{5/}; and

(2) that Walsh waive all rights to contest the findings of fact, conclusions of law, and terms and conditions contained in this agreement in this or any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: November 16, 1994

^{1/} The Commission has evidence that Carroll subsequently received contributions of \$500 and \$600 from two of the Massachusetts lobbyists who were at this meal.

^{2/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{3/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re John Hancock Life Insurance Company*, 1994 SEC ____ (Hancock violated §3(a) by providing meals, golf and event tickets to legislators); *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists); *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

On the present facts, §3 applies to the lobbyists entertaining Walsh where the intent was generally to create goodwill and the opportunity for access, even if specific legislation was not discussed.

^{4/} As discussed above in footnote 3, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyists and Walsh.

^{5/} This amount is three times the \$700 approximate total value of the prohibited gratuities received by Walsh and represents both a disgorgement of the gratuities and a civil sanction.